

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW MEXICO

3
4 UNITED STATES OF AMERICA,)

No. 1:20-CR-00972-WJ

5 Plaintiff,)

6 vs.)

Pete V. Domenici U.S. Courthouse
Cimarron Courtroom

7 TRUDY MARTINEZ,)

Albuquerque, New Mexico

8 Defendant.)

Friday, September 10, 2021

10:00 A.M.

9
10 TRANSCRIPT OF PROCEEDINGS

11 SENTENCING HEARING

12 BEFORE THE HONORABLE WILLIAM P. JOHNSON

CHIEF UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

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24 Proceedings reported by machine shorthand and transcript
25 produced by computer-aided transcription.

1 USA v. Martinez 20-CR-972

2 Sentencing Hearing

3 * * * * *

4 (In Open Court at 10:03 A.M.)

5 THE COURT: This is United States vs. Trudy Martinez,
6 20-CR-972. Would counsel enter their appearances for the
7 record, please.

8 MR. ALIBERTI: Good morning, Your Honor. Thomas
9 Aliberti on behalf of the United States.

10 MS. RIVAS: Good morning, Your Honor. Irma Rivas on
11 behalf of Ms. Martinez, who is present and in custody.

12 THE COURT: Ms. Rivas, just a couple of -- as a
13 preliminary matter, did you review the Presentence Report with
14 Ms. Martinez?

15 MS. RIVAS: Yes, I did, Your Honor. I reviewed both
16 versions with Ms. Martinez.

17 THE COURT: Okay. Now, there's some objections to
18 guideline calculations. In terms of the factual recitations,
19 were there objections to those, as well?

20 MS. RIVAS: No, Your Honor.

21 THE COURT: Okay. All right, let me begin, then,
22 with the United States. I've reviewed your sentencing
23 memorandum, but for the record, the Probation Office calculated
24 the Offense Level at 28, the Criminal History Category to be 2,
25 and the guideline range is 87 to 108 months. And then as to

1 Count 2, the guideline sentence is the statutorily required
2 sentence of 120 months, because that involved the use of a
3 firearm during and in relation to a crime of violence. And by
4 statute, the 120 months has to run consecutive to the sentence
5 imposed on the other count. So therefore, the guideline range
6 becomes 207 to 228 months. Is the United States' position
7 consistent with the recommendation of the Probation Office?

8 MR. ALIBERTI: That is correct.

9 THE COURT: Okay. Ms. Rivas, do you want to proceed
10 first with your objection on the -- I believe it's a two-level
11 enhancement for obstruction of justice?

12 MS. RIVAS: Yes, Your Honor. Would the Court like me
13 to use the podium, or may I --

14 THE COURT: Well, you can either use the podium or
15 remain at table, but if you remain at table, you need to be in
16 front of the microphone.

17 MS. RIVAS: I'll do that, then.

18 Your Honor, regarding the obstruction charge, we'd
19 ask the Court to look at the facts of the case and see that the
20 Government has failed to establish both that her conduct was
21 willful and that it had any material effect upon her finding of
22 guilt. Your Honor, regarding the willful, looking at the -- I
23 understand this is an enhancement and not a charge, but looking
24 at the Tenth Circuit instructions, we see that willfulness
25 imposes on the Government a burden of establishing that

1 Ms. Martinez would have some knowledge that her conduct was
2 unlawful or that she had a precise legal duty not to act in
3 that way. We ask the Court consider that when considering
4 whether her action was unlawful. There are many other
5 explanations.

6 One important thing, Your Honor, is that this weapon
7 was found merely a quarter mile from the house. She didn't
8 take it with her. She didn't destroy it. Leaving it only a
9 quarter mile from the home, Your Honor, made it pretty easy to
10 find, which is exactly what happened in this case. The evening
11 that the FBI agents came to the home where this took place,
12 they found it immediately and took pictures of it. As the
13 Court can see from the Government's sentencing memorandum,
14 those pictures show that the rifle was in a shallow river very
15 near the house.

16 Considering that there were other people in the
17 vicinity, many of those children, it also makes sense that the
18 removal of the magazine and the hiding of the weapon was for
19 the purpose of safety, to prevent either some of the minors
20 from finding the weapon and firing it, or considering the
21 difficult -- the angry situation before the event and the anger
22 that most likely resulted after the event, to prevent anyone
23 from using that rifle.

24 Your Honor, we also ask the Court consider that the
25 rifle was not material to finding Ms. Martinez guilty. There

1 are several items of evidence that would have been produced had
2 this case gone to trial, and those items of evidence would have
3 established her guilt without the weapon. One of those items
4 is an interview with the daughter of the victim, and that
5 person, in her interview, describes both that she saw Trudy
6 fire the weapon and, two, described the weapon as a black AR-15
7 and that the rifle looked exactly like the ones the officers
8 were carrying at the scene.

9 We also ask the Court consider that regarding
10 materiality, there was an utterance by the victim before her
11 death. Ms. Martinez's cousin, Emily Tsosie, was also
12 interviewed after the incident, and in that interview -- she
13 lived near the home. She ran over to the home immediately
14 after and saw Ms. McCabe -- I apologize; saw the victim in the
15 bed, and the victim said to her, "Trudy shot me."

16 Your Honor, there's also an OMI report that
17 specifically states, without having possession of the weapon,
18 that the victim died as a result of a gunshot wound to the
19 abdomen.

20 So Your Honor, for those two reasons we ask that the
21 Court find that the gun was neither -- that the placing of the
22 gun in the dry river was neither -- there's neither evidence to
23 show that she willfully did it to obstruct the investigation in
24 this case and, two, that it was not material to the finding of
25 her guilt.

1 THE COURT: Okay. The United States may respond.

2 MR. ALIBERTI: Thank you, Your Honor. I just want to
3 make sure, Your Honor, that we're all talking about the same
4 standard here, and the appropriate standard that applies in
5 this case when determining whether an enhancement for
6 obstruction of justice applies.

7 The authority that was provided in the objection by
8 the defense frankly, from the Government's point of view,
9 actually supports the Government's argument. What each of
10 those opinions are discussing are the situation where an
11 individual is obstructing justice at the time of arrest, or
12 contemporaneous with arrest. Why is that important? That is
13 important because a different standard applies in order to get
14 the exception and, basically, be absolved from an obstruction
15 of justice enhancement.

16 Both of those cases refer to both an action that has
17 to take place -- an obstruction that has to take place at the
18 time of arrest, and then also, if that is the case, the burden
19 is then on the Government to prove what's called a material
20 hindrance to the prosecution of the case. And that makes
21 sense, because in that scenario somebody is acting reflexively.
22 They try to swallow something, and then the Government has to
23 prove that, hey, if it happened reflexively at the time of
24 arrest, then you have to prove that there was a material
25 hinderance to the case. That makes sense.

1 That's not what we're talking about in this scenario
2 at all, and therefore, the standard materiality is different.
3 It is, as the case law cited by the defense says, conspicuously
4 low. Materiality is conspicuously low. So I think it's
5 important to walk through the enhancement first and then talk
6 about the facts. The enhancement, as it's supposed to be
7 applied in this case, and the facts that prove it.

8 A two-level sentencing enhancement applies if the
9 defendant willfully obstructed, impeded, or attempted to
10 obstruct or impede the administration of justice with respect
11 to an investigation, prosecution or sentencing of the instant
12 offense of conviction, and the obstructive conduct has to
13 relate to the offense of conviction. Easy. The obstructive
14 conduct that occurred prior to the start of the
15 investigation -- which is what happened here; not
16 contemporaneous with arrest, prior to the start of the
17 investigation -- has to be purposefully calculated and likely,
18 likely to thwart the investigation or prosecution of the
19 offense of conviction.

20 Obstructive conduct includes destroying or concealing
21 evidence that is material to the official investigation. So
22 materiality as it's supposed to be applied to a situation where
23 the obstruction occurs before there is any sort of arrest,
24 contemporaneous to arrest. Materiality is evidence, fact,
25 statement, or information that it believes would tend to

1 influence or affect the issue under determination. Tend. That
2 is why it's called conspicuously low. It is not a certainty,
3 it is not something you look back in hindsight and decide,
4 well, did it materially hinder the investigation or prosecution
5 in this case. The question is whether it would tend to.
6 That's it. So with that in mind, the case law says it's
7 conspicuously low.

8 And frankly, the Bedford case, I think, makes this
9 distinction wonderfully. It says, hey, this case involved
10 drugs, and law enforcement were trying to conduct an
11 investigation involving drugs. A prosecutor was evaluating
12 whether to charge the defendant with a drug crime. So yeah,
13 drugs are self-evident. The materiality is self-evident to
14 that type of a case.

15 Hiding the murder weapon in a murder case is likely
16 to thwart the investigation. This is precisely why
17 Ms. Martinez attempted to hide the firearm. No evidence in the
18 PSR, or in that lengthy self-serving statement that she gave to
19 the forensic evaluator, states anything about doing it for
20 safety. I think it's easy to infer that removal of the clip,
21 in addition to hiding the firearm -- which you can see from the
22 photographs, Your Honor, was not just thrown as she was running
23 away. It was wrapped in a towel. It was hidden in the arroyo,
24 covered by rocks, covered by dirt. This was conscious,
25 deliberate, willful action on her part. And then the clip goes

1 with her. That's willful obstruction that would tend to
2 influence or affect the issue under determination.

3 And there's some other things about this case that I
4 think highlight the importance of this evidence and go above
5 and beyond whether it would tend to influence or affect any
6 issue under determination. Ms. Martinez was going to obviously
7 argue some sort of justification defense, based on the
8 statements given by witnesses. The witnesses I would have in
9 this case are, 1), one child witness, Cordelia Martin, that
10 witnessed what took place. Now, you don't see Ms. Martinez in
11 the courtroom today, despite the fact that she was invited.
12 Ms. Martinez is having a very difficult time even speaking
13 about what took place that day. The statement, the dying
14 declaration, would rely on the Judge's determination that
15 that's admissible.

16 Frankly, I think even without a justification
17 defense, the hiding of the firearm as you're fleeing the scene
18 and then on the run for a week is tantamount to a confession.
19 And if you recall, Your Honor, Ms. Martinez did not even make a
20 statement to police at the time. All of these facts point to
21 the materiality and issue. It doesn't have to be the ultimate,
22 penultimate decision in the case. It's incredibly broad and
23 clearly completes the inferential chain between her, the crime
24 that was committed -- her and the crime that was committed.

25 I think it's intimately intertwined with essential

1 elements that the United States would have to prove, and I
2 think it's hubris to sit here and say that, well, you can rely
3 on child witnesses, you can rely on an evidentiary
4 determination later on down the road, that's going to prove
5 your case beyond a reasonable doubt. And as I stated before,
6 that's not even the burden. It's whether it actually tends to
7 influence an element. That's it. Or an issue to be
8 determined. That's it.

9 The issue in this case I think it most directly goes
10 to is guilt, and consciousness of guilt. So hiding the firearm
11 is consciousness of guilt. It's a lack of justification. It's
12 an issue that would have been litigated at trial, and
13 therefore, it's material. The fact that she was not successful
14 in her attempt to conceal the evidence, or even that the
15 concealment was destined to fail, which is a large part of the
16 argument of the defense, is irrelevant, and that's cited to in
17 their own case law that they provide to Your Honor, in Bedford.
18 It's irrelevant. And Massey, actually. It means nothing.

19 And that makes sense. You don't just get to sidestep
20 an enhancement by saying, well, it didn't really result in
21 anything, any -- it wasn't really successful in the
22 concealment. That doesn't make sense. I mean, that would
23 eliminate a large swath of defendants from obtaining this
24 enhancement, and I don't think that's what the sentencing
25 guidelines intend.

1 If Your Honor has any questions, I'm happy to answer
2 them.

3 THE COURT: No. Ms. Rivas, since you filed the
4 objection, do you have anything in addition you want to say in
5 response to the Government's argument?

6 MS. RIVAS: Yes, Your Honor, briefly. We would just
7 again reiterate what we wrote in our objection. I think that
8 in those two cases, those two items of evidence were material
9 because, in the first case, without having -- had the Coast
10 Guard not known that the boat had been boarded, that slip of
11 paper would have been material to its investigation. Whether
12 or not it was is quite different than our situation.
13 Similarly, how can a person be charged with possession of
14 cocaine with intent to distribute if the authorities are not
15 even aware that there is cocaine and also cannot possibly weigh
16 it. In this situation, Your Honor, for the reasons that we
17 gave, the rifle in this case was not material.

18 Further, the Government did not need to tie the
19 weapon to Ms. Martinez, even after it found it. There was no
20 DNA or fingerprints ran on that gun. Factually -- and I think
21 the Government cannot dispute this -- Ms. Martinez was leaving
22 the location of this incident with her three minor daughters,
23 and her only real way of trying to get her daughters to safety
24 and away from the scene was to possibly hitchhike, and having
25 her three minor daughters with a rifle in her bag would have

1 made it incredibly difficult to do that.

2 And lastly, Your Honor, I just want to comment that
3 it's inappropriate for the Government to comment on
4 Ms. Martinez's right to remain silent at the time of her
5 arrest.

6 THE COURT: All right. Regarding the two-level
7 enhancement that the Probation Office applied pursuant to
8 Sentencing Guideline §3C1.1, that provision of the guidelines
9 essentially states that a two-level sentencing enhancement
10 applies: "If (1) the defendant willfully obstructed or
11 impeded, or attempted to obstruct or impede, the administration
12 of justice with respect to the investigation, prosecution, or
13 sentencing of the instant offense of conviction, and (2) the
14 obstructive conduct related to (A) the defendant's offense of
15 conviction and any relevant conduct; or (B) a closely related
16 offense." The obstructive conduct related to the offense of
17 conviction, and in terms of the first part about the
18 obstruction or attempt to impede, the key word there is
19 investigation, because that's what was happening at the time
20 this rifle was discovered.

21 Now, according to the application note, "Obstructive
22 conduct that occurred prior to the start of the investigation
23 of the instant offense of conviction may be covered by this
24 guideline if the conduct was purposefully calculated, and
25 likely, to thwart the investigation or prosecution of the

1 offense of conviction." And I agree with the United States
2 that the enhancement contemplates that obstructive conduct can
3 vary widely in the nature and degree of planning and
4 seriousness.

5 And then in Application Note 3 of the guideline, it
6 gives examples of conduct, including destroying or concealing
7 evidence that is material to an official investigation. And
8 then material evidence is defined as: "Evidence, fact,
9 statement, or information that, if believed, would tend" -- and
10 the key word there is tend -- "to influence or affect the issue
11 under determination." And that's Application Note 6.

12 Now, in terms of material, I've never seen, in terms
13 of cases that go to trial where it's a homicide or some kind of
14 a case where someone died from a gunshot wound, where the
15 United States at the time of trial would not introduce into
16 evidence, you know, the weapon that is recovered and believed
17 to have been used in the commission of the crime, and there's
18 no doubt in my mind that if this case was going to go to jury
19 trial, the United States would take the weapon, if it was
20 recovered, that the United States believed was used in the
21 commission of the crime and send the weapon to the FBI Crime
22 Lab to see if there's fingerprints, and also, if there was a
23 bullet that was recovered from the deceased victim, to
24 determine through ballistics analysis if the weapon that the
25 FBI or the Government suspected was used in the homicide

1 matched the markings on the bullet that was recovered from the
2 deceased victim or recovered from the crime scene.

3 So the defendant and defense counsel don't get to
4 determine the evidence that the Government is going to use at
5 trial, and so this weapon was material in that it meets the
6 definition of material evidence in that it would tend to
7 influence or affect the issue under determination; more
8 specifically, that this was the weapon that was used at the
9 time the victim was killed by the gunshot wound to her abdomen.

10 Now, the record before me shows that Ms. Martinez
11 secreted or hid the weapon by placing the assault rifle
12 approximately a quarter of a mile from the scene of the crime,
13 and the weapon, the AR-15, was wrapped in a towel and put in
14 an arroyo between stones and dirt that covered the firearm.
15 You can see that from the exhibits that are attached to
16 Document 52. That is the Government's sentencing memorandum.
17 And so in my view, it follows that purposefully hiding or
18 attempting to hide the murder weapon in a homicide case before
19 the investigation begins is likely to thwart the investigation,
20 and therefore, I will find that Probation correctly applied the
21 two-level obstruction of justice enhancement, and I will
22 overrule the Defendant's objection to that enhancement.

23 Were there any other objections to the guideline
24 calculations besides that two-level enhancement?

25 MS. RIVAS: No, Your Honor.

1 THE COURT: All right. Now, the United States
2 Supreme Court has stated that the starting point in federal
3 sentencing is for the sentencing court to arrive at a correctly
4 calculated guideline sentence. Therefore, I will find that the
5 Defendant's correctly calculated guideline sentence in this
6 case is a guideline range of 207 to 228 months. That's based
7 on Count 2 of 120 months consecutive to Count 1, and the range
8 on Count 1 -- let me ask the Probation Officer, I'm looking for
9 it in the Presentence Report. What paragraph is it?

10 MR. HUNT: It's 94, Your Honor.

11 THE COURT: Thank you. So the total offense Level is
12 28, the Criminal History Category is II, the guideline range is
13 87 to 108 months with respect to Count 1, and Count 2 requires
14 a minimum 120 month consecutive sentence. So the guideline
15 range is 207 to 228 months.

16 Let me inquire of the United States, in terms of a
17 sentence that is sufficient, but not greater than necessary to
18 satisfy the goals of sentencing, do you have further argument
19 you wish to state on the appropriate sentence in this matter?

20 MR. ALIBERTI: Your Honor has my sentencing
21 memorandum where I outline why the United States believes that
22 this is a distinguishable voluntary manslaughter from others,
23 and I do address some of the sentencing factors. What I'd like
24 to do is make a couple of additional points having to do with
25 the nature and circumstances of the offense, the history and

1 characteristics of the Defendant, and also talk a little bit
2 about victim impact, which is also outlined in the sentencing
3 memorandum.

4 But with respect to nature and circumstances of the
5 offense, as I stated in my sentencing memorandum, this offense
6 occurred, was either seen or heard by multiple, maybe upwards
7 of eight children ranging in age from maybe three up to
8 fifteen, three of which saw their mother after she -- either
9 saw their mother get shot, or saw their mother directly after
10 the offense was committed. Obviously in the submissions of
11 transcripts of the interviews immediately after this took
12 place, these children were experiencing trauma, anger, grief,
13 and obviously at that point they hadn't fully processed it.
14 And that continues to be ongoing.

15 Adverse childhood experiences and potentially
16 traumatic events in childhood can reverberate in a child's life
17 throughout their life. Some of the consequences include
18 unstable relationships, drug abuse, negative effects on their
19 health and other opportunities. And so I think it's worth
20 mentioning that this crime did not just take a life, not just
21 one, it impacted nearly a dozen more. That's why I think it's
22 distinguishable. Some of those comments that I supplied in the
23 transcript I think are haunting.

24 I also think it's important to talk a little bit
25 about the moments after Cornelia McCabe was shot and her

1 daughter, who was I believe 13 at the time, rushed to her
2 assistance and the Defendant pointed the firearm at her. Now,
3 her brother who was behind her, aged I believe it was 16 at the
4 time, thought for sure that she was also going to be a victim
5 of Ms. Martinez's. I think that that is distinguishable.
6 Ms. Martinez did not call for help. She did not let anybody
7 assist. In fact, she threatened their lives, as well.

8 I also think -- I've heard this case described as a
9 tragedy, which is an event resulting in great suffering, and
10 the first example in the definition of tragedy is equating it
11 to a serious accident. I just want this Court to acknowledge
12 that there was nothing accidental about this. She has pled to
13 intentionally causing Cornelia McCabe's death, and I think that
14 that intent and self-interest is a ligature that ties together
15 all of her actions during the course of this case.

16 She was angry because folks weren't helping her clean
17 up, and she was concerned about Child Protective Services. She
18 was the one who started the physical altercation. She told
19 everyone to leave the house, because the house was hers. She
20 made the decision to obtain the firearm, the decision to obtain
21 the clip. The firearm was then loaded. She shot not once, but
22 twice. She didn't call for help, as I mentioned. She remained
23 at large, putting her children in harm's way, to avoid
24 prosecution and being held responsible, in her own
25 self-interest. And she had a birthday party for one of her

1 children in the park where family members called law
2 enforcement to come and get her while she was at large, in her
3 own self-interest.

4 The killing of this victim was unjustified. It was
5 unprovoked. She did not have a weapon. If you do rely in any
6 way, shape or form on this self-serving recitation that's in
7 that evaluation, it sounds like the victim in this case was
8 actually trying to help Ms. Martinez.

9 If we look at her history and characteristics, she is
10 not a youthful offender. This is not her first time making law
11 enforcement contact. I do think it's important for the Court
12 to look at her ongoing criminal behavior while in custody. I
13 also think -- not only in a fight in I believe it was 2019,
14 late 2019, but also in this most recent incident where she
15 obtained a screwdriver from a maintenance man. I've heard and
16 received some information from defense counsel that they will
17 likely argue that she was off her medication, but Your Honor
18 should take into consideration the circumstances of that
19 offense. She worked in concert with several other inmates to
20 obtain that screwdriver. One blocked the camera, another
21 assisted in her opening it. She secreted it in her cell. All
22 of which, I think, is worth taking into consideration when you
23 read her letter and she states that she has changed.

24 I do want to talk briefly about victim impact. The
25 victims are not here. You've read the statement by Gerard in

1 the sentencing memorandum. There are some overarching themes
2 in my communication with them, including a tremendous sense of
3 loss, grief, suffering, a sense of betrayal, and also a strong,
4 full-throated desire for accountability. I put in my
5 opposition to the Motion to Continue this sentencing hearing
6 back in July of 2020 a statement about how she would not be,
7 the victim would not be present for the children's graduations
8 and other important moments in their lives, and that's not
9 hyperbole, that comes directly from the lips of one of the
10 victims in this case. He saw his mother as his counselor. It
11 was who he would go to when he needed advice, and she is not
12 there.

13 Ms. Cordelia, who is 15 now, I asked her if she could
14 tell me about her mother so I could tell the Court a little bit
15 about her mother, and we sat in silence, because she couldn't
16 say anything about what took place, her feelings about it,
17 still years later, all of which I think distinguishes this and
18 warrants a sentence at the higher end of the presumptive
19 sentencing range. Thank you, Your Honor.

20 THE COURT: Ms. Rivas.

21 MS. RIVAS: Thank you, Your Honor.

22 Your Honor, may we approach the podium?

23 THE COURT: Certainly.

24 MS. RIVAS: Thank you.

25 Your Honor, I did hear what the Government had to

1 say. In the bit of time that I've represented Native
2 Americans, it seems that Ms. Martinez is also a victim of all
3 these crimes of violence against her, as we indicated in our
4 sentencing memorandum, and all the results that the Government
5 explained -- unstable relationships, health, drug use --
6 unfortunately have affected Ms. Martinez.

7 We submitted a picture of the small home that the
8 eleven people lived in. They'd been living there for some
9 time, approximately -- that's the home she grew up in. She'd
10 been living there approximately four years. Her mother died
11 approximately two years before the date of this incident. Her
12 mom had been a mediator between all of the siblings and the
13 children, as the matriarch of the family, and when she passed
14 away, there was disorder in the home. There was constant
15 arguing between the adults, understandably, given the small
16 space that eleven people lived in. Considering that the eight
17 children, as children will do, argued, misbehaved, that caused
18 tension between the adults, of course, with each parent taking
19 their own sides regarding them and leading to disagreements.

20 Also a source of stress between the adults was a lack
21 of money to provide for these children. I think not that it
22 justifies what happened here, but both adults had some fault in
23 that regard. Ms. Martinez admits that her inability to have
24 money to provide sufficiently for her children had a lot to do
25 with her use of methamphetamine and alcohol, and that, of

1 course, ripples and causes her to not be able to work, and not
2 being able to work causes her not to have a vehicle and so on.
3 Her brother, who she is the most close to, and the victim in
4 this case also spent time and money at the casinos in the
5 evenings, which also created some tension and some issues
6 between them. Unfortunately, this culminated here.

7 On this day, Ms. Martinez had been trying to stay off
8 of methamphetamine and was off of it for two days. As the
9 Court may know, methamphetamine is probably one of the more
10 nasty of all the drugs and affects a person's decision-making.
11 In her attempt to be free from methamphetamine, she did consume
12 a large quantity of alcohol. Her daughters had just been
13 returned to her from Navajo Social Services, and they had
14 indicated that they may come by on a surprise visit to inspect
15 the home and take a look at the kids.

16 Your Honor, what she was trying so desperately to do
17 in her very, perhaps not thought-out way, was to keep her
18 children, to keep the family together, and what happened
19 instead was that her actions did blow up a bomb into her
20 family. As the Court can see, she was hoping that she would
21 have some family support. She does have a niece, Christina,
22 here. None of her brothers and sisters are here. She suffers
23 the pain of that. She will always suffer the pain of that.

24 As the Court saw from our sentencing memorandum and
25 from Dr. Johnson's report, despite the fact that I've met

1 oftentimes with Ms. Martinez, oftentimes our meetings are not
2 productive because she's just so overwhelmed with her actions,
3 and wishes, as the Court can see from the letters that she
4 wrote to the Court, she wishes that she could take back time.

5 She is eager to make amends. She has never received
6 any -- she has not received proper parenting classes, drug
7 treatment. She has not finished her high school. And of
8 course, part of that is her own doing, but she is ready to do
9 that. She wants to make amends. She was hoping that her
10 brother, the husband of the victim in this case, would be here
11 and that the Court would allow her to read the letter that we
12 included to the Court in the sentencing memorandum.

13 THE COURT: If the United States determines it's
14 appropriate to forward the letter to the victim's significant
15 other, then you are free to do so.

16 MR. ALIBERTI: Certainly we'll ask them if they are
17 willing to accept the letter.

18 MS. RIVAS: Your Honor, she's hoping to make amends
19 with all of her family, most importantly her daughters. She is
20 having a difficult time with everyone, but most importantly her
21 daughters. Her daughters are rightfully angry with her for
22 what happened here, and that's very painful to her. It's
23 difficult to try to make a repair in those relationships, to
24 try to come back into the fold of the family with her in
25 custody.

1 Your Honor, I did want to discuss a few of the
2 factors that the Court is to consider. One is, of course, that
3 in her effort to try to keep her family together, her actions
4 caused her family to fall apart. Secondly, Your Honor, we ask
5 that the Court consider, in regard to deterrence, she doesn't
6 have any history of crimes of beating people up or shooting
7 people. Regarding that issue, I don't -- for lack of a better
8 term, Ms. Martinez is not a repeat offender for assaults or for
9 murder charges. She is eager to begin her treatment. She is
10 eager to address the poor choices she's made.

11 I also want to address the case that the Government
12 cited regarding the need for the sentence imposed to promote
13 respect for the law, just punishment, adequate deterrence. The
14 Government cites Bryant, and I ask the Court to consider that
15 Bryant is completely different from the situation in our case.
16 Bryant discusses crimes against Native women in the context of
17 repeat domestic violence perpetrators and why the repeat
18 domestic violence offense was added under 18 U.S.C. 117(a).
19 Ms. Martinez is not a domestic violence offender, and
20 definitely not a repeat domestic violence offender.

21 In the sentencing memo at Page 8, and in the case at
22 Page 1959, the Government cites that Bryant indicates that
23 American Indian and Alaska Native women experience "certain
24 violent crimes" at two-and-a-half times the national average.
25 Those certain violent crimes are rape and sexual assault, Your

1 Honor. That is not a situation that applies to Ms. Martinez.

2 And regarding the statistic from Dr. Andre Rosay
3 regarding domestic violence, I believe that at Page 14 is what
4 the Government is referring to, that more than four in five
5 American Indian and Alaska Native women, that's 84.3 percent,
6 have experienced violence in their lifetime, and those
7 particular acts of violence refer to sexual violence, physical
8 violence by an intimate partner, stalking, and psychological
9 aggression by an intimate partner. Again, Your Honor, that is
10 not a situation that applies to Ms. Martinez, and so we would
11 ask the Court to disregard those figures as they do not apply
12 to her.

13 Your Honor, regarding her treatment, given the
14 charge, we do believe that it may be possible that she may not
15 qualify for the RDAP program, but if allowed, she'd like to
16 enter and complete it. She has proven use of alcohol at the
17 time of the offense, and methamphetamine use just two days
18 before her arrest -- before the date of this incident. We've
19 looked at certain facilities. Most of these facilities are low
20 security levels. I do believe that she may qualify for those
21 facilities upon completion of her GED.

22 Principally, Your Honor, we'd ask the Court to
23 recommend Bryan, which is in Houston. Although that is far, it
24 does seem to have a lot of the things that she is needing and
25 requesting in order to get back on her feet. Of course, the

1 GED program; it has a one-year certificate in accounting, which
2 is something she's interested in and wants to pursue; it has
3 therapy and psycho-educational groups; RDAP and nonRDAP
4 treatment; parenting classes; and psychologists available.
5 we'd also ask a recommendation to Carswell, and lastly, she
6 wanted a recommendation to Dublin.

7 THE COURT: So the first would be Bryan?

8 MS. RIVAS: Yes, Your Honor.

9 THE COURT: Second, Carswell?

10 MS. RIVAS: Yes, Your Honor.

11 THE COURT: And the third was what?

12 MS. RIVAS: Dublin, Your Honor.

13 THE COURT: Okay.

14 MS. RIVAS: And Your Honor, we do also want to
15 address briefly the incidents that took place at the
16 facilities. Regarding -- and we didn't file a formal
17 objection. Those things did happen.

18 The first incident we want to clarify was not -- I
19 believe somewhere it mentions that it was eight people. It was
20 not eight people, it was her and one other person. She was not
21 yet taking her psych medications in August, and we do have
22 those medical records if the Court would like to review them.
23 Regarding the incident here in August, through no fault of her
24 own, she had stopped receiving her psych medications.

25 She also accepted responsibility and accepted

1 punishment. She has been in the SHU, Your Honor, and that
2 punishment is particularly difficult considering it's the month
3 before she appears before Your Honor for sentencing. It's been
4 a month where she's been alone with her own thoughts, you know,
5 thinking about this and thinking about the Court's decision in
6 her case.

7 THE COURT: Regarding that incident, certainly it's
8 within the Government's prerogative to raise it, and certainly
9 within your prerogative to address it. But in terms of the
10 sentencing that I'm going to impose, I'm not going to rely on
11 it or consider it one way or the other.

12 MS. RIVAS: Thank you. And if I could have a moment.
13 Your Honor, I have nothing else to add.

14 THE COURT: Did Ms. Martinez wish to make a
15 statement?

16 THE DEFENDANT: I'd just like to read my letter, Your
17 Honor.

18 THE COURT: Certainly.

19 THE DEFENDANT: Honorable Judge Johnson. I am
20 standing here today thanking you for letting me speak on my
21 behalf. I want to let the courts and my family know how deeply
22 sorry I am for the pain and sorrow that I have caused everyone.
23 There is nothing that I can say that will bring my
24 sister-in-law back, but I am standing before you today to
25 accept my punishment for my actions. I didn't want this to

1 happen, but unfortunately it did, and because I chose to use
2 drugs and alcohol, a life was taken. If I would have made
3 better choices, she would still be here. I am truly sorry for
4 what I have done. I am not asking for forgiveness or sympathy,
5 I am just asking for mercy, Your Honor.

6 I am taking this time I receive to benefit and to
7 change my life, Your Honor. I hope that you will consider a
8 drug rehab program for my addiction. I have struggled with
9 this my whole life, and I am asking for help today. I would
10 like to further my education and to improve my parenting
11 skills. I am interested in helping other people who are
12 struggling with addiction, as well.

13 I am standing here today as a changed person. I want
14 to prove to my family, to the probation, and to the courts that
15 if given a second chance, I will put in the effort to change my
16 life and do better. I am sorry from the bottom of my heart for
17 what I have done.

18 Your Honor, growing up with alcohol in the house was
19 a big influence on my childhood. As a child, I lived from
20 house to house due to my mother's alcoholism. It led me to
21 being sexually molested at the age of six years old. After
22 that, I wasn't the same happy child I once was. It affected me
23 physically and mentally. At the age of 13, I finally stepped
24 up for myself and told my counselor about what was happening to
25 me at home. I started to struggle with mental abuse, because I

1 was suicidal. I attempted suicide multiple times, and I
2 started going to counseling for both. It wasn't helping me, so
3 I started to drink at the age of 15 and was kicked out of
4 school for my marijuana problem. I found myself staying under
5 the influence of drugs to cope with my issues, to numb my pain
6 and the thoughts of what I went through as a child. I was
7 never able to express myself through anyone.

8 After I had left school, I never graduated, and ended
9 up pregnant at the age of 17. I have three beautiful children
10 that I do not regret. They are my everything. I did my best
11 to raise them. I am not perfect, but I tried. I struggled
12 with addiction because of my childhood and because of my
13 ex-boyfriend of two years who shot and beat me. I tried to go
14 to rehab for meth addiction soon after, but I never
15 successfully completed it. I do plan on getting treatment and
16 taking parenting classes that will be available to me while I
17 am incarcerated.

18 I see myself completing my high school diploma and
19 going to college for my associate's degree for accounting. I
20 am also interested in taking psychology courses to maintain a
21 degree so I can help others that are in the same situation as
22 me. This incident that occurred on April 26, 2019, could have
23 been prevented, but it took place, and now all I can do is the
24 right thing by accepting my punishment. It hurts me to know
25 that it took place in front of the kids.

1 Your Honor, I am a single parent and I am all my
2 children have. Please, Your Honor, I am asking you to have
3 mercy on me and give me another chance to be with my babies and
4 my nieces and nephews, another chance to help my brother with
5 everything he is struggling with because of me. I did not mean
6 for this to happen, Your Honor. I need to prove this to the
7 courts and my family by completing everything that is ordered
8 of me today. Thank you for giving me a chance to speak to you
9 and my family today. Thank you, Your Honor.

10 THE COURT: Thank you.

11 Anything else, Ms. Rivas?

12 MS. RIVAS: No, Your Honor.

13 THE COURT: I'll formally accept the plea agreement
14 in this case. Having ruled on the objections to the guideline
15 calculations, I'll adopt the Presentence Report's factual
16 findings. I've determined and made findings on the guideline
17 sentencing range. That is, it would be an Offense Level 28,
18 Criminal History Category II, which is 87 to 108 months on
19 Count 1, and then Count 2, the guideline sentence is a
20 statutorily required sentence of 120 months, which must by
21 statute run consecutive to any sentence imposed in Count 1.
22 Therefore, the total guideline sentencing range is 207 to 228
23 months.

24 Now, in terms of recommendations to the Bureau of
25 Prisons, I recommend that the Defendant, if she's eligible,

1 that she be designated first to the Bryan, Texas, facility. If
2 not Bryan, then to the Carswell facility. And if not Carswell,
3 then the Dublin facility. I strongly recommend the Defendant
4 participate in the Bureau of Prisons' 500 hour drug and alcohol
5 treatment program. I also strongly recommend that the Bureau
6 of Prisons allow the Defendant to participate in any high
7 school or GED classes so she can earn a high school diploma or
8 GED, and I recommend that she be allowed to participate in
9 additional classes regarding parenting, psychology, and also
10 classes in accounting, if they're available, because that is a
11 career area the Defendant wants to work in.

12 Regarding the terms of supervised release, the
13 Defendant is placed on supervised release for a term of three
14 years as to Count 1, and five years as to Count 2, concurrent,
15 for a total term of supervised release of five years. The
16 Defendant must comply with mandatory and standard conditions of
17 supervision. The following special conditions will be imposed.

18 The Defendant must, during the term of supervised
19 release, she must complete 50 hours of community service. The
20 Defendant may choose the form of community service, but
21 whatever community service she chooses must be approved by the
22 Probation Officer, and she must provide written verification of
23 the completed community service.

24 The Defendant must participate in an outpatient
25 substance abuse treatment program and follow the rules and

1 regulations of the program. Since the Probation Office must
2 supervise the Defendant's participation in outpatient substance
3 abuse treatment, the Defendant must sign the necessary
4 paperwork to allow the treatment provider to release treatment
5 information to the Probation Office. The Probation Officer may
6 disclose the Presentence Report and any previous substance
7 abuse or psychological evaluations to the treatment provider.

8 The Defendant is subject to substance abuse testing
9 to determine if she's used any prohibited substances. Testing
10 shall not exceed more than sixty tests per year, and she cannot
11 tamper with or obstruct any of the testing methods.

12 while under supervised release, the Defendant must
13 submit to a search of her person, property, residence,
14 vehicles, papers, computers, and any electronic communication
15 or data storage devices under her control. The Probation
16 officer may conduct a search under this condition only when
17 reasonable suspicion exists, and any search must be done in a
18 reasonable manner and at a reasonable time for the purpose of
19 ensuring compliance with her conditions and to make sure she's
20 not possessing any alcohol, illegal substances, weapons, or
21 other types of contraband. The Defendant must inform any
22 residents where she's residing that the premises may be subject
23 to a search.

24 The Defendant must not use or possess alcohol. She
25 may be subject to alcohol testing, and if alcohol testing is

1 employed, then testing shall not exceed more than four tests
2 per day. The Defendant cannot tamper with or interfere with
3 any of the alcohol testing methods or procedures. The
4 Defendant must not knowingly purchase, possess, distribute,
5 administer, or otherwise use any psychoactive substances that
6 impair her physical or mental functioning. These conditions
7 are all imposed based on the Defendant's history of substance
8 abuse, including abuse of alcohol, marijuana and
9 methamphetamine.

10 The Defendant must participate in a mental health
11 treatment program and follow the rules and regulations of that
12 program. Since the Probation Office must supervise the
13 Defendant's participation in mental health treatment, the
14 Defendant must sign the necessary paperwork to allow the
15 treatment provider to release treatment records to the
16 Probation Office. The Probation Officer may disclose the
17 Presentence Report and any other mental health evaluations and
18 other treatment records to the treatment provider. The
19 Defendant must take all mental health medications that are
20 prescribed by her treating physician. These conditions are
21 imposed based on the mental health issues, including depression
22 and anxiety, which were identified in the Presentence Report.

23 The Defendant must not communicate or otherwise
24 interact with members of the victim's family, either directly
25 or through someone else, without prior approval of the

1 Probation Office. This condition is imposed because the
2 victim's family is still living at the residence where this
3 offense occurred, and the victim's family are still suffering a
4 lot of trauma from this event.

5 The Defendant must participate in an educational or
6 vocational services program and follow the rules and
7 regulations of the program. In the event the Defendant does
8 not complete her GED or high school diploma while in the
9 custody of the Bureau of Prisons, then this condition will
10 assist the Defendant in obtaining a GED and furthering her
11 education, which will ultimately improve her employability.

12 I neglected to ask, are there disputes over the
13 restitution amounts?

14 MS. RIVAS: No, Your Honor.

15 THE COURT: All right. The Mandatory Victims
16 Restitution Act is applicable in this case. Therefore, I am
17 required to order restitution. Restitution will be made in the
18 amount of \$1,628.90 to the victims, and \$6,000 to the Crime
19 Victim Reparation Commission. Restitution shall be submitted
20 to the Clerk of the Court at the address here for this
21 courthouse. Restitution will be paid in full or in monthly
22 installments of \$50, or ten percent of the Defendant's income,
23 whichever is greater. No fine will be imposed, because in my
24 view restitution is more important than the Government
25 collecting a fine.

1 Consistent with the stipulation in the plea
2 agreement, the Defendant forfeits her rights, title and
3 interest to the Bushmaster AR-15 rifle and the 5.56-millimeter
4 Winchester ammunition.

5 Under the law, I'm required to impose a special
6 penalty assessment of \$100 as to each count of conviction, for
7 a total penalty assessment of \$200, and I'm required to state
8 that it's due immediately.

9 Now, in terms of the custody portion of the sentence,
10 18 United States Code Section 3553(a) requires the Court to
11 impose a sentence sufficient, but not greater than necessary to
12 comply with the purposes set forth in Paragraph 2 of this
13 subsection, which are the goals of sentencing. The statute
14 says: "The Court, in determining the particular sentence to be
15 imposed, shall consider the nature and circumstances of the
16 offense, and the history and characteristics of the Defendant."
17 The next paragraph says, "The need for the sentence imposed A)
18 to reflect the seriousness of the offense, to promote respect
19 for the law, and to provide just punishment for the offense."

20 Subfactor B is to afford adequate deterrence to
21 criminal conduct. That's not only a specific deterrence
22 relating to the Defendant, but there's also the general
23 deterrence aspect of this factor that essentially means that
24 the sentence imposed should deter others from committing
25 similar type sentences. Subfactor C is to protect the public

1 from further crimes of the Defendant, and Subfactor D is to
2 provide the Defendant with needed educational or vocational
3 training, medical care, or other correctional treatment in the
4 most effective manner.

5 Regarding Subfactor D, I've made the recommendations
6 regarding education and allowing the Defendant to participate
7 in that, as well as the 500 hour drug and alcohol treatment
8 program.

9 And then also, there's a factor, Number 6, that says,
10 "The need to avoid unwarranted sentence disparities among
11 defendants with similar records who have been found guilty of
12 similar conduct." In other words, treat similarly situated
13 defendants the same as much as possible. The guideline
14 sentence generally satisfies that factor, but that factor is
15 not necessarily carved in stone. Otherwise, there could never
16 be a departure or a variance.

17 Now, in terms of the history and characteristics of
18 the Defendant, in reviewing this Presentence Report, the
19 Defendant does have a lot of trauma and abuse that she
20 experienced as a child. I don't doubt that at all. In terms
21 of her adult convictions, beginning in Paragraph 48 when she
22 was 19, there's a series of tribal court convictions which
23 don't create any criminal history points, but these are the
24 type of convictions -- a child not properly restrained, for
25 example, and endangering the welfare of a minor. That's

1 Paragraph 49.

2 Paragraph 50, unlawful use of a weapon. There was an
3 arrest for that in tribal court. Again, there's another
4 conviction in tribal court for -- it would appear that her
5 children were not properly restrained when she was operating a
6 motor vehicle. That's Paragraph 51. Paragraph 52, same type
7 of offense, infant child passenger restraints.

8 Paragraph 53, now this conviction came out of the
9 Eleventh Judicial District Court in Aztec, New Mexico. The
10 conviction was abandonment of a child. She received 364 days
11 custody, all suspended except for 16 days, time served. In
12 reading the narrative, officers were dispatched to a motel in
13 reference to two small children, ages 1 and 2, wandering around
14 the parking lot unattended. The children were only in diapers
15 and it was unknown which room they were residing in. It goes
16 on to state that information was received indicating the
17 children had entered Room 14 earlier that day, so the officers
18 went to that room and knocked loudly on the door. When no one
19 answered, a master key was used to enter the room and the
20 Defendant and a male were both found intoxicated and passed
21 out. So as a result of this, the charge of abandonment of a
22 child was filed.

23 And then in Paragraph 54, the Defendant picks up a
24 conviction for driving while under the influence of liquor and
25 drugs, and in Paragraph 55, in 2014, she gets an aggravated

1 driving while under the influence conviction. She was also
2 charged with abandonment of a child in that offense, and that
3 proceeded in Gallup.

4 I mention this because one of the factors that I'm
5 concerned about is to protect the public from further crimes of
6 the Defendant. I understand the Defendant is dealing with
7 significant substance abuse issues, but there's not been any
8 indication that she's been able to overcome her substance
9 abuse. I have imposed some conditions of supervision for
10 treatment, and hopefully she can overcome her addictions, but I
11 am concerned. I think the sentence that I'm going to impose
12 will satisfy the goals of sentencing in terms of protecting the
13 public from further crimes of the Defendant.

14 Also in analyzing that factor, I cannot help but be
15 concerned or find that that factor comes into play based on the
16 conduct that occurred in this case in terms of taking an
17 assault rifle and shooting and killing the victim. Of course,
18 the Defendant was under, again, I think, under the influence,
19 or had been using drugs and alcohol just prior to the
20 circumstances where the victim was killed.

21 MS. RIVAS: Your Honor, if I may?

22 THE COURT: What?

23 MS. RIVAS: Your Honor, I just want to clarify that
24 49 and 50, 51 and 52, are all the same day; one incident.

25 THE COURT: All right, I'll note that for the record.

1 Now, the sentence that I'm going to impose will
2 reflect the seriousness of the offense, promote respect for the
3 law, and will provide just punishment for the offense. In
4 terms of deterrence, a lengthy sentence, given the egregious
5 nature of this crime, a lengthy sentence will satisfy the
6 requirement of affording deterrence to criminal conduct.

7 Now, in terms of the nature and circumstances of the
8 offense, I don't doubt at all what the Defendant stated, that
9 all of this has completely has torn apart her family, but I
10 would note that it's destroyed the victim's family. And it's
11 obvious that the victim's children still carry a significant
12 amount of trauma, and will probably for the rest of their lives
13 because of circumstances where they witnessed their mother
14 being shot and killed by the Defendant. This whole situation,
15 the killing of the victim, in my view, is unjustified,
16 senseless, it was intentional and violent, and it resulted in
17 the death of a partner and a mother. It's also disturbing, at
18 least from the comments from one of the victim's children who
19 was interviewed, that that child indicated that the Defendant
20 had pointed the firearm at her sister, who was a third grader.

21 So the conduct in this was particularly egregious,
22 unjustified and senseless, and therefore I will make the
23 finding that a sentence that is sufficient, but not greater
24 than necessary to satisfy the goals of sentencing, is a
25 commitment to the custody of the Bureau of Prisons for a term

1 of 108 months as to Count 1, and 120 months as to Count 2,
2 consecutive, for a total term of incarceration of 228 months.
3 I've already made the recommendations to the Bureau of Prisons
4 and imposed conditions of supervised release. So finally, I
5 will find that pursuant to the plea agreement, the Defendant
6 waives the right to appeal the final sentence in this matter.

7 Is there anything else from the United States?

8 MR. ALIBERTI: I have nothing further, Your Honor.

9 THE COURT: Anything else, Ms. Rivas?

10 MS. RIVAS: No, Your Honor.

11 THE COURT: All right. We'll be in recess. Thank
12 you.

13 (Proceedings adjourned at 11:20 A.M.)

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)
)
)
 Plaintiff,)
)
 vs.)
)
 TRUDY MARTINEZ,)
)
 Defendant.)

No. 1:20-CR-00972-WJ

CERTIFICATE OF OFFICIAL COURT REPORTER

I, Mary K. Loughran, CRR, RPR, New Mexico CCR #65, Federal
Realtime Official Court Reporter, in and for the United States
District Court for the District of New Mexico, do hereby
certify that pursuant to Section 753, Title 28, United States
Code, that the foregoing is a true and correct transcript of
the stenographically reported proceedings held in the
above-entitled matter on Friday, September 10, 2021, and that
the transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.
Dated this 16th day of October, 2021.

MARY K. LOUGHRAN, CRR, RPR, NM CCR #65
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